

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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WASHINGTON, D.C. 20554

In the matter of )

Replacement of Part 90 by Part 88 to )  
Revise the Private Land Mobile Radio )  
Services and Modify the Policies )  
Governing them )

and )

Examination of Exclusivity and )  
Frequency Assignment Policies of )  
the Private Land Mobile Radio Services )

PR Docket No. 92-235

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**COMMENTS OF NEBRASKA PUBLIC POWER DISTRICT**

The Nebraska Public Power District ("NPPD") files this comment in response to the Commission's Report and Order and Further Notice of Proposed Rule Making herein (FCC 95-255), released June 23, 1995.<sup>1</sup>

*Summary.* These comments focus on two issues, viz., liberal channel-sharing amongst public agencies, and the exemption of public agencies from spectrum usage fees and auctions. Decisions on these issues by the FCC will affect a projected state mobile

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1/ NPPD is a public corporation and a political subdivision of the State of Nebraska. It provides retail electric service over 95 percent of the geographic area of the state.

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radio network in Nebraska. NPPD has a letter of intent covering the study of such a network.<sup>2</sup>

The District urges that the rules adopted by the Commission in this proceeding not impede plans for such a state network. Specifically,

- (i) Public entities should be permitted to share trunked radio facilities in the 400 and 800 mcs. bands that are primarily licensed to any other governmental entity;
- (ii) The Commission should not inquire into the cost-allocations among governmental entities sharing such radio facilities; and
- (iii) Facilities owned by governmental entities should be subject neither to fees nor to auctions.

*A State Network is Needed.* The present radio facilities of the state agencies and the District are largely obsolescent and do not provide full radio coverage of the state.

-- *The State.* The state's facilities are severely deficient as to inter-operability among state agencies and between state and local agencies. The last significant changes to the system design of the state's radio network were made in the 1960s. Moreover, the existing systems are not designed to accommodate data transmission.

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2/ The Division of Communications by statute has responsibility, in general terms, for the planning and procurement of telecommunications facilities and services for the "mainline" state agencies.

The Division has recognized that there would be significant cost and operational advantages to a single statewide system serving the radio needs of

- the State Patrol
- the Department of Roads
- the Game & Parks Commission
- the Department of Corrections
- the State Civil Defense/Military Department,

as well as such other radio users as the University of Nebraska, the Department of Institutions, the State Building Division, the Department of Aeronautics, the Brand Committee, the State Electrical Division, the State Fire Marshall, and the State Probation Administration. In addition there are other state agencies whose operations do not warrant standalone statewide radio systems but would benefit from a shared, statewide radio capability.

-- NPPD. Similarly, the NPPD's mobile radio system provides less than one-hundred-percent coverage of its 90,000 square mile service area, and the system is not adequate to support the most efficient delivery of service to the public. The District's present system had its beginning in the late 1940s with radios in the 50 MHz band. It has not changed in its fundamental design or operation since its inception, despite recent advances in mobile radio technology. The primary equipment vendor has withdrawn support for its equipment in use, which constitutes eighty percent of that installed. In addition, inter-operability among state- and local-government operations and NPPD/REA/major user operations -- particularly in times of construction,

maintenance, and disaster -- is needed. Coverage area limitations and the lack of commonality of radio frequencies among transceivers has made emergency operations much more difficult than would be the case with a modern system.

*Actions being Taken.* The Division and the District are taking steps to remedy the deficiencies in the two systems. As a result of the Commission's report and order in Docket No. 87-112, the State developed a regional plan using the allotted 800 MHz spectrum.<sup>3</sup> The Division thereafter prepared a conceptual plan for a statewide consolidated 800 MHz trunked radio system, which was presented to the State Legislative Fiscal Office to obtain approval to the next level of the project, *viz.*, retaining a consultant to prepare a system plan based on detailed analysis of the radio needs of user agencies.

At about the same time, NPPD has begun upgrading its extensive fiber and microwave transmission network and plans to replace its obsolescent mobile radio equipment in the near future. The switch to higher frequencies will require some resiting of NPPD towers.

The possibilities for economy and improved coverage by a combined state-local-NPPD system are obvious.

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3/ See Public Safety National Plan, 3 F.C.C. Rcd 905, 64 R.R.2d 192 (1987). The regional plan for Region 26 was adopted by staff action, Nebraska Region Public Safety Plan, 5 F.C.C. Rcd 2457 (1990), and later amended. Id., 6 F.C.C. Rcd 6140 (1991).

Accordingly, the Division has issued a letter of intent to NPPD to explore the opportunities for a joint radio network infrastructure. The Division has contracted for consulting services to study a radio communications upgrade for the State of Nebraska. The consultant has been requested to study in detail -  
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-- a consolidated radio system using NPPD's backbone system and sharing all resources, and

-- a state-owned and -operated system independent of NPPD.

The consultant is being asked to develop a plan that will also accommodate several local political subdivisions of the State and the State's willingness to take on an entrepreneurial role in providing this system to the communities. The consultant's plan is to be presented to the state legislature for funding.

*A State-wide, Shared System is in the Public Interest.* A state-wide, shared system is in the interests of the residents and taxpayers of the State of Nebraska and its local governments, of the ratepayers of NPPD, and of spectrum economy. Such a shared system not only benefits the taxpayers, by making more efficient use of their tax dollars, but it would provide public services to taxpayers (i) in all parts of the state and (ii) more efficiently because of better equipment and inter-operability among state and local government entities, including the participating non-profit electrics.

A state-wide, shared system would advance the public interest in efficient use of the radio spectrum. The present state and District radio systems operate on a mélange of frequencies, with relatively broad channels. Improving the way in which the public entities are now operating their systems is exactly what the Commission's orders in PR Docket No. 92-235 are aimed at.

*Implementation requires money.* The Commission's policy objectives will be more readily and rapidly achieved if the operators of these public radio systems have adequate funding. Without the prospects of adequate funding there will be delays at every stage of migrating state and local government systems to the allocations and assignment principles embodied in Docket No. 92-235, and maximally spectrum-efficient systems will simply not be built. For the Commission, we respectfully submit, it's a strategic choice of the carrot versus the stick.

Such a state-wide system will be an extraordinarily expensive capital project for a state such as Nebraska, and all accessible sources of funding will have to be tapped.<sup>4</sup> To match the financial requirements of the system and the fiscal capacities of the various entities in Nebraska, as many entities as possible should participate and contribute financial support.

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4/ The fiscal problem is not peculiar to Nebraska. Nebraska is not the only sparsely settled state in the Union, and the states and local governments in general are in a period of extreme financial stringency.

Moreover, a comprehensive mobile radio system needs to draw financial resources in different ways from the benefitted agencies. For instance, the State and the District might be expected to provide or guarantee large parts of the initial capital funding on behalf of primary users. Financial support from the state's secondary user agencies, the local governments, the electric coops, and NPPD's major electric users might be expected to contribute a higher percentage of their financial contributions toward non-capital expenses.

In short, a viable financial plan for a state-wide, shared system, depends on tailored participation by as many entities in the state as possible.

*The Rules Should Not Impede Broad Participation.* The Commission's rules on sharing should not frustrate broad participation by as many entities in the state as possible. Unlimited sharing by public entities should be allowed, irrespective of category of public user. And that sharing should be allowed even on public safety frequencies, as long as the non-public safety use does not foreclose any non-sharing public safety users in the area (if any). With appropriate trunking software, it should be possible for a shared system to serve the needs of diverse users, while retaining the ability to partially recapture system capacity to the extent necessitated by emergency communications. The ability to partially recapture system

capacity in times of emergency insures that the primary use of the system's public safety frequencies is that of public safety.

The Commission's sharing rules should permit various sharing configurations. It is still too early to tell in Nebraska which public entities will own which parts of any state-wide shared system.<sup>5</sup> The situations in other states may vary widely.

Because the system will be owned by one or more public entities, the Commission should not insist upon precise cost apportionment. The state should be free to apportion the capital and operational costs among the participating users, both public and private.

*State-wide Systems Should Not be Subject to Fees or Auctions.* Because the fostering of statewide shared systems advances the public interest generally, and the spectral efficiency objectives of the Commission in particular, the Commission should not place fiscal impediments in the way of the state entities' migration from uncoordinated, less efficient system configurations and equipment to higher efficiency shared systems. Auctions, of course, impose fiscal burdens on state entities as the functionally similar application fees that fall outside the Commission's authority under Section 8(d) of the Act, 47 U.S.C. § 158.

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<sup>5/</sup> Of course, the mobile units in all likelihood will be owned by their respective users, with the possible exception of civil defense units.



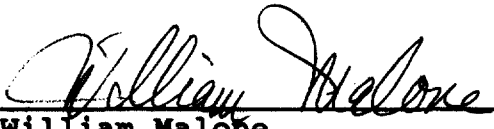
### Conclusion

For the foregoing reasons, the Commission should adopt rules fostering spectrum-efficient, shared government-owned systems by permitting unlimited sharing by governmental entities and should not impose cost-apportionment formulae on such systems. In addition, the Commission should not subject the governmental operators of such systems to the auction process.

Respectfully submitted,

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